

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PHILLIP HARDY,

Petitioner,

CASE NO. 1:12-cv-15329

HONORABLE THOMAS L. LUDINGTON

v.

ROBERT NAPEL,

Respondent.

**ORDER DENYING WITHOUT PREJUDICE PETITIONER'S
MOTIONS FOR EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL**

Petitioner Phillip Hardy, a state inmate, petitions for a writ of habeas corpus pursuant 28 U.S.C. § 2254. Petitioner also moves for an evidentiary hearing and appointment of counsel. ECF Nos. 2, 3.

The Supreme Court instructs that a federal court's review under 28 U.S.C. § 2254(d)(1) must be confined to the record that was before the state court. *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011). The Court further instructs that a federal district court should not hold an evidentiary hearing until after the court determined that the petition survived review under § 2254(d)(1). *Id.*

Here, this Court has not yet determined whether the petition survives § 2254(d)(1) review. Petitioner's motion for an evidentiary hearing will be denied without prejudice.

Petitioner also moves that appointment of counsel. The constitutional right to counsel in criminal proceedings provided by the Sixth Amendment does not apply to an application for writ of habeas corpus, which is a civil proceeding. *Cobas v. Burgess*, 306 F.3d 441, 444 (6th Cir. 2002). A court may nevertheless appoint counsel for a habeas petitioner "[w]henver the United

States magistrate or the court determines that the interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B).

Here, after the Court has carefully reviewed the pleadings and state court record, if the Court determines that appointment of counsel is necessary, it will do so at that time. Petitioner need not file any further motions regarding this issue.

Accordingly, it is **ORDERED** that Petitioner’s motions for evidentiary hearing and for the appointment of counsel (ECF Nos. 2 and 3) are **DENIED WITHOUT PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: May 20, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon Phillip Hardy, #749710 at Marquette Branch Prison, 1960 U.S. Hwy 41 South, Marquette, MI 49855 by first class U.S. mail on May 20, 2013.

s/Tracy A. Jacobs
TRACY A. JACOBS